

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID SLACK, et al.,  
Plaintiffs,

v.

RUSSELL E. BURNS, et al.,  
Defendants.

Case No. [13-cv-05001-EMC](#) (KAW)

**ORDER REGARDING 7/11/16 AND  
7/14/16 LETTERS RE: DEPOSITION OF  
DEBORAH MORGAN**

Re: Dkt. Nos. 326, 328

On July 11, 2016, Defendants filed a discovery letter concerning their inability to depose Deborah Morgan and asking the undersigned for further assistance in obtaining her deposition testimony prior to the October trial date. (7/11/16 Letter, Dkt. No. 326.) On July 14, 2016, Plaintiffs filed a response, in which they pointed out that Defendants' letter violated the Court's standing order that discovery disputes be addressed by joint letter. (7/14/16 Letter, Dkt. No. 328.) Plaintiffs are correct.

As to Ms. Morgan's health, on May 17, 2016, the Court found that she was unavailable for medical reasons. It is not known whether she remains unavailable.

Accordingly, the Court TERMINATES both letters and orders the parties to meet and confer in good faith with each other and Ms. Morgan's attorney, Lawrence R. Hupertz, to discuss whether Ms. Morgan can sit for a deposition, and what accommodations, if any, are medically necessary. If Ms. Morgan is medically available, the parties shall meet and confer and schedule a deposition.

If Mr. Hupertz contends that Ms. Morgan remains medically unavailable, the parties shall file a joint letter, and Mr. Hupertz shall lodge (do not file) a letter from Ms. Morgan's treating physician that directly addresses Ms. Morgan's limitations, why reasonable accommodations

would not allow her to undergo deposition, and when he expects her to become medically available. A letter simply stating that she cannot work or that she is on pain medication<sup>1</sup> is insufficient. Instead, the doctor shall explain why reasonable accommodations cannot be made. Such accommodations may include, but are not limited to, rest breaks, changes in body positioning (sitting, standing, lying down, elevation of extremities), scheduling the deposition over two or more days, and a temporary change in pain management medications or medication administration to ensure competency. Mr. Hupertz shall furnish a copy of this order to Ms. Morgan's treating physician should a letter be required.

If a subsequent joint letter is required, upon review of the letter, Mr. Hupertz's submission, and any further records that may be made available to the Court, the undersigned will determine whether Ms. Morgan is medically able to undergo deposition.

Plaintiffs shall serve a copy of this order on Mr. Hupertz.

IT IS SO ORDERED.

Dated: July 21, 2016

  
KANDIS A. WESTMORE  
United States Magistrate Judge

---

<sup>1</sup> The court does not believe that all pain medications, including controlled substances, render an individual incompetent or otherwise unable to undergo deposition.